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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GARY A. STEIN,)	Case No.: 12-cv-0816 H (BGS)
)	
Plaintiff,)	NOTICE OF MOTION AND MOTION TO
)	WITHDRAW AS ATTORNEY OF RECORD
v.)	FOR PLAINTIFF; MEMORANDUM OF
)	POINTS AND AUTHORITIES IN SUPPORT
RAY MABUS, Secretary of the Navy,)	THEREOF; DECLARATION OF GARY G.
)	KREEP
Defendant.)	
)	
)	
)	

TO DEFENDANT RAY MABUS, AND HIS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiff will and hereby does move the Court for leave to withdraw attorney Gary G. Krep (hereinafter referred to as "KREP") as an attorney of record in the above-captioned case. This motion is brought on the grounds that KREP was elected as Judge of the San Diego County Superior Court, and he is scheduled to be sworn in on January 7, 2013. As KREP will no longer be able to practice law, his withdrawal in this case is necessary. Plaintiff will continue to be represented by attorneys Nathan Oleson and David Loy.

1 NOTICE IS FURTHER GIVEN that this motion is based on this Notice of Motion and Motion,
2 the Memorandum of Points and Authorities filed herewith, the Declaration of Gary G. Krep (hereinafter
3 referred to as "KREP Decl.", the pleadings and papers on file herein, and upon such other matters as
4 may be presented to the Court at the time of the hearing.

5 NOTICE IS FURTHER GIVEN that KREP has complied with the requirements of Local Rule
6 83.3 as explained in KREP Decl.

7
8 DATED: January 2, 2013

Respectfully submitted,

9 /s/ GARY G. KREP

Gary G. Krep (SBN 066482)

10 UNITED STATES JUSTICE FOUNDATION

11 932 D St., Suite 3

Ramona, CA 92065

12 Attorney for Plaintiff
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO
WITHDRAW AS ATTORNEY OF RECORD**

**I. KREEP Requests That The Court Grant Leave To KREEP To Withdraw As
Counsel For Plaintiff Because Kreep Will Be Sworn In As Judge On January 7,
2013, And Will No Longer Be Authorized To Practice Law.**

The Court is requested to grant leave to KREEP to withdraw as counsel of record for Plaintiff in the above-captioned action. This request is timely, and it will not adversely affect Plaintiff. The Request is made because KREEP was elected as Judge of the San Diego County Superior Court, and he will be sworn in on January 7, 2013. As KREEP will not be authorized to practice law once he is sworn in, his withdrawal from this case as attorney of record for Plaintiff is necessary.

The Court's "decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." *Beard v. Shuttermart of Cal.*, 2008 WL 410694, *2 (S.D. Cal. Feb. 13, 2008). In ruling on a motion to withdraw as counsel, the following factors are considered: "(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case." *Id.* (citations omitted). Here, KREEP can demonstrate good cause for withdrawal, in that KREEP's withdrawal will not prejudice any of the parties, or harm the administration of justice. Further, attorneys Nathan Oleson and David Loy will continue to represent Plaintiff in this matter.

II. Good Cause Exists For Kreep's Withdrawal As Counsel Of Record For Plaintiff

Judges in the California State Courts are bound by the California Code of Judicial Ethics. (Preamble to the California Code of Judicial Ethics). Canon 4G of the Code states that "[a] judge shall not practice law."

Based on the enumerated section of the California Code of Judicial Ethics, as set forth above, KREEP submits that good cause exists for his withdrawal from this case, and that his withdrawal is necessary.

III. Compliance With The Notice Provisions

1 KREEP has complied with Southern District of California Local Rule 83.3(g), which requires that
2 “[a] notice of motion to withdraw as attorney of record must be served on the adverse party and on the
3 moving attorney’s client” and “[a] declaration pertaining to such service must be filed.” *Id.* A copy of
4 KREEP’s motion has been served on counsel for Defendant and on Plaintiff Gary Stein. *See* KREEP
5 Decl.

6 **IV. KREEP’s Withdrawal Will Not Prejudice Plaintiff**

7 Generally, “[a]n attorney may not withdraw until he or she ‘has taken reasonable steps to avoid
8 reasonably foreseeable prejudice to the rights of the client...’” *Pacific Rollforming, LLC v. Trakloc*
9 *Intern.*, 2008 WL 4682239, *1 (S.D. Cal. Oct. 21, 2008) (citing Cal. R. Prof. Conduct 3-700(A)(2)). In
10 this case, Plaintiff will continue to be represented by attorneys Nathan Oleson and David Loy. As such,
11 Plaintiff will not suffer prejudice due to KREEP’s withdrawal as attorney of record for Plaintiff.

12 **CONCLUSION**

13 For the foregoing reasons, KREEP respectfully requests that this Court enter an order granting the
14 withdrawal of KREEP as attorney of record for Plaintiff in this matter.

15 DATED: January 2, 2013

Respectfully submitted,

16 /s/ GARY G. KREEP

Gary G. Kreep (SBN 066482)

17 UNITED STATES JUSTICE FOUNDATION

18 932 D St., Suite 3

Ramona, CA 92065

19 Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Federal Rule of Civil Procedure, Rule 5, on January 3, 2013.

A copy of this document was served via U.S. Mail and electronic mail to the below address on January 3, 2013:

Gary Stein
31419 Orchard Ln.
Murrieta, CA 92563
Email: armedforcestp@gmail.com

/s/ GARY G. KREEP

Gary G. Krep